

**RUBIN, FIORELLA & FRIEDMAN LLP**

ATTORNEYS AT LAW  
292 MADISON AVENUE  
NEW YORK, NEW YORK 10017  
TELEPHONE: (212) 953-2381  
FACSIMILE: (212) 953-2462

**MEMO ENDORSED**

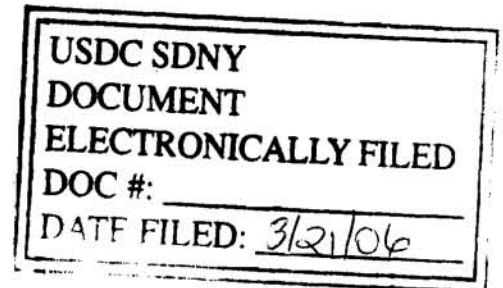
WRITER'S DIRECT DIAL:

E-MAIL: (212) 447-4604  
PKovner@rubinfiorella.com

March 16, 2006

**Via Facsimile 212-805-7968**

Honorable Kenneth M. Karas  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 920  
New York, New York 10007-1312



Re: Waxman v. Puccio  
Docket No.: 05 CV 10503 (KMK)  
Our File No.: 557-6971

Dear Judge Karas:

We represent the defendant Thomas Puccio in the above referenced matter.

We respectfully request a pre-motion conference for a motion to dismiss the complaint in lieu of answer. Previously, the parties stipulated to extend the time to move or answer to March 16, 2006. We requested the extensions because we had not yet received defendant's files with respect to the underlying case. We still do not have the relevant files, but plaintiff, perhaps understandably, was unwilling to grant a further extension.

We would like to move to dismiss the plaintiff's complaint on the grounds that:

- a. The complaint should be stayed or dismissed pursuant to the Federal Arbitration Act because the retainer agreement between the parties requires that any fee dispute should be resolved by arbitration. Milgrim v. Backroads, Inc., 142 F.Supp.2d 471, 476 (S.D.N.Y. 2001); Spray Hondings, Ltd. v. Pali Financial Group, Inc., 269 F.Supp.2d 356, 366 (S.D.N.Y. 2003).
- b. The allegation of fraud in the inducement does not meet the requirements of Rule 9(b) of the Federal Rules of Civil Procedure. Wood v. Inc. Village of Patchogue of New York, 311 F.Supp.2d. 344, 351

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(E.D.N.Y. 2004); Hampshire Equity Partners v. Teradyne, Inc., 2005 WL 736217, at 2 (S.D.N.Y.).

- c. Plaintiff does not have a valid legal malpractice cause of action since she cannot allege that "but for" defendant's negligence she would have been successful in her action. Hand v. Silverman, 15 AD3d 167, 167 (1st Dept 2005), lv denied 5 NY3d 707 (2005); Edwards v. Haas, Greenstein, Samson, Cohen & Gerstein, 17 AD3d 517, 519 (2d Dept. 2005).
- d. Plaintiff's claims of legal malpractice and breach of fiduciary duty are not timely. DeCarlo v. Ratner, 204 F.Supp.2d 630, 635 (S.D.N.Y. 2002); Cooper v. Parsky, 140 F.3d 433, 440-441 (2d Cir. 1998).

Defendant Thomas Puccio would be prejudiced if he is not permitted to make this motion since he would have to expend substantial time and resources in answering the complaint and engaging in discovery.

Respectfully,



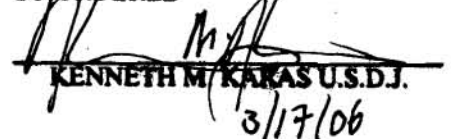
Paul Kovner

PK:mb

cc: Benjamin, Brotman & Associates, P.C. (Via Facsimile 212-829-1518)

Plaintiff is directed to respond to this letter by March 23, 2006. The Court will hold a pre-motion conference on April 7, 2006 at 12 P.M. Defendant's time to answer or otherwise respond to the complaint is stayed until the conference, on the assumption that counsel for Defendant will make a diligent, good faith to obtain Defendant's files.

SO ORDERED



KENNETH M. KARAS U.S.D.J.  
3/17/06

RUBIN, FIORELLA & FRIEDMAN LLP